action was illegal and the Hotel Company was justified in terminating the services of the workers on strike. When the services were terminated there was a trade dispute arising, connected with non-employment *i.e.* termination of services, and the Minister properly referred the trade dispute to the Industrial Court. Therefore the answers to the questions of law referred to the High Court are as follows:

Question (i)
Once it was shown that a strike was legal, the workmen should not be required further to show that the strike was justified. All legal strikes should be taken as justified and all illegal strikes as unjustified. Under the circumstances of this case the strike was illegal, as shown above.

Question (ii)
The Hotel Company was justified in terminating the services of the workers on strike because the strike was illegal.

Question (iii)
See the answer to question (i).

Question (iv)
The Industrial Court should have considered and decided on the question whether the Hotel Company was the employer of the workers in the restaurant of the Restaurant Company because the question was relevant. As shown above, the Hotel Company was not their employer.

Question (v)
The Industrial Court had erred in law and made a jurisdictional error in failing to consider and decide on the question whether there should be a single collective agreement. The decision should be that there should be separate collective agreements and hence separate negotiations, as shown above.

I confirm the Industrial Court's decision that the Hotel Company was justified in terminating the services of the workers on strike.

Order accordingly.

Solicitors: *Skrine & Co.; Eugene Lye & Co.*

NATIONAL UNION OF HOTEL, BAR & RESTAURANT WORKERS v. KUALA LUMPUR RESTAURANT SDN. BHD.

[A.C.J. (Wan Hamzah S.C.J.) October 11, 1985]

[Kuala Lumpur – Civil Appeal No. 33 of 1983]

Industrial Relations – Termination of workers' services – Whether termination valid – Restaurant closed owing to bad business – Whether closure bona fide – Whether Hotel Company or Restaurant Company is the real employer of the workers – Industrial Relations Act, 1967.

Pursuant to section 26 of the Industrial Relations Act the Minister referred to the Industrial Court a dispute between the National Union of Hotel, Bar & Restaurant Workers (the Union) and Kuala Lumpur Restaurant Sendirian Berhad (the Restaurant Company). On March 2, 1979, the Union submitted proposal for new single collective agreement for both the Hotel Company and the Restaurant Company. The parties met but were unable to reach agreement on the proposal. The Hotel Company wanted separate negotiations and separate collective agreements.

On July 28, 1979, the Restaurant Company wrote to 53 workers in the restaurant stating that owing to heavy losses it had to cease business. By the same letters the services of the workers were terminated as from July 30, 1979.

The Union contended that the closure of the restaurant was not genuine and it was not done for business reasons but as a retaliatory measure against the Union (for insisting on a single collective agreement). In reply, the Restaurant Company argued that the employment of the workers was terminated upon the closure of the restaurant owing to losses sustained in the operation of the restaurant, and it was denied that the termination of employment was done as a retaliation against the Union.

The Industrial Court held that at the time of the closure of the restaurant the Management was in financial difficulties and that the closure was *bona fide* and justified, and it held that the services of the workers were properly and legally terminated. The Industrial Court also held that the question of whether the Hotel Company was the employer of the workers was not relevant, and it refrained from making a decision on the question. On the application of the Union the Industrial Court referred certain question of law to the High Court for decision.

Held: (1) the Industrial Court was correct in stating that it found no relevance to decide whether or not the Hotel Company was the employer of the workers of the restaurant since it found that the closure was due to business losses;

(2) the Industrial Court did not commit jurisdictional error in declining to decide whether or not the Hotel Company was the employer of the workers of the restaurant.

APPEAL FROM INDUSTRIAL COURT.

T. Thomas for the applicant.

V. K. Palasuntharam (*Eugene Lye* with him) for the respondent.

Cur. Adv. Vult.

Wan Hamzah S.C.J.: Pursuant to section 26 of the Industrial Relations Act Menteri Buruh Dan Tenaga Rakyat referred to the Industrial Court a dispute between the National Union of Hotel, Bar & Restaurant Workers (the Union) and Kuala Lumpur Restaurant Sendirian Berhad (the Restaurant Company).

The Union contended that the workers working in the restaurant of the Restaurant Company were employed by Hotel Malaya Sendirian Berhad (the Hotel Company). On March 2, 1979, the Union submitted proposal for a new single collective agreement for both the Hotel Company and the Restaurant Company. The parties met but were unable to reach agreement on the proposal. The Hotel Company wanted separate negotiations and separate collective agreements. On July 28, 1979, the Restaurant Company wrote to 53 workers in the restaurant stating that heavy losses had been sustained in the operation of the restaurant and it was no more economic to operate the restaurant business and it was decided to cease business as from July 30, 1979. By the same letters the services of the workers were terminated as from July 30, 1979. In the Statement of Case filed by the Union in the Industrial Court it was alleged that the closure of the restaurant was not genuine and it was not done for business reasons but as a retaliatory measure against the Union (for insisting on a single collective agreement), and the Union prayed the Industrial Court to:

(a) rule that the real employer was the Hotel Company and not the Restaurant Company;

(b) find that the alleged closure of the restaurant was not done *bona fide* and for business reasons;

(c) direct the Hotel Company to reinstate all the workers without loss of any benefits both monetary or otherwise.

In the Statement of Reply filed by the Restaurant Company it was alleged that the employment of the workers was terminated upon the closure of the restaurant due to losses sustained in the operation of the restaurant, and it was denied that the termination of employment was done as a retaliation against the Union. After hearing the dispute the Industrial Court made a finding that at the time of the closure of the restaurant the management was in financial difficulties, and that the closure was *bona fide* and justified, and it held that the services of the workers were properly and legally terminated. The Industrial Court also held that the question of whether the Hotel Company was the employer of the workers was not relevant, and it refrained from making a decision on the question. On the application of the Union the Industrial Court has referred the following questions of law for the decision of the High Court:

(1) Whether the Industrial Court was wrong in stating that it found no relevance to decide whether or not by 'functional integrality' Hotel Malaya is the employer of the employees of Kuala Lumpur Restaurant, when the whole case of the union was founded on its averment that in fact and law Hotel Malaya was and is the real employer of the employees of Kuala Lumpur Restaurant.

(2) Whether the Industrial Court also committed a jurisdictional error in declining to decide the issue as in (1) above.

As has been shown above, the issue before the Industrial Court was whether:

(a) the termination of the employment of the workers was done as a retaliatory measure against the Union (in which event the termination would be mala fide and unjustified and the workers should be reinstated in their employment), or

(b) the restaurant management had suffered such financial losses as would necessitate the closure of the restaurant and consequently the termination of employment of the workers.

Before me it was argued by counsel for the Union that the question whether the Hotel Company was the employer of the workers is important in two areas:

(i) If the Hotel Company is the true employer, consideration of the financial position of the restaurant management should not be confined solely to the accounts of the Restaurant Company but the accounts of the Hotel Company should also be brought into consideration. This is necessary for the purpose of considering whether the closure of the restaurant was justified;

(ii) If it is held that the Hotel Company was the true employer the method of retrenchment of "first out, last in" should be applied to all the workers of the Hotel Company and it would not be proper to retrench the 53 workers without applying that method.

The issues (i) and (ii) stated by Counsel for the Union were not raised in the Union's Statement of Case filed in the Industrial Court. No typewritten copy of the notes of hearing of the Industrial Court was produced to the High Court but a photocopy of the handwritten notes of hearing is included in the record for the High Court. It is not easy to read the photocopy, but I did my best to find out from the photocopy whether the issues (i) and

(ii) were argued, and I find no reference to such matters. Nor is there any reference to them in the Industrial Court's Award. If the issues (i) and (ii) had been placed before the Industrial Court, the question as to whether the Hotel Company was the true employer would be relevant. Otherwise it would not. It is true that in the Statement of Case the Union asked the Industrial Court to decide that question as a preliminary issue, but that was for the purpose of justifying the Union's demand for a single collective agreement. The Statement of Case does not show other purposes for asking the Industrial Court to decide that question. Nor was an issue raised in the Industrial Court as to the capacity of the Restaurant Company to issue the notices of termination of employment. Therefore the answers to questions of law before the High Court are as follows:

Answer to question of law No. (1):

The Industrial Court was correct in stating that it found no relevance to decide whether or not the Hotel Company was the employer of the workers of the restaurant, since it found that the closure was due to business losses.

Answer to question of law No. (2):

The Industrial Court did not commit jurisdictional error in declining to decide whether or not the Hotel Company was the employer of the workers of the restaurant.

I would like to take this opportunity to make the following observation. I notice that prayer was made by the Union to the Industrial Court for an order of reinstatement against the Hotel Company although the Hotel Company had not been made a party to the proceedings.

Order accordingly

Solicitors: *Skrine & Co.; Eugene Lye & Co.*

JULIA DORIE ANAK BUJANG & ORS. v. Y.T.K. SHIPPING SDN. BHD.

[O.C.J. (Chong Siew Fai J.) August 22 & 28, 1986]

[Sibu – Civil Revision No. 1 of 1986]

Workmen's Compensation – Submission of dispute to arbitration – Order of arbitrator – Whether order properly made – Scope of arbitrator's authority – Workmen's Compensation Act 1952, ss. 27 & 30.

In this case a claim was made under the Workmen's Compensation Act 1952 in respect of the death of one Chin Sey Lek. The Assistant Commissioner in pursuance of section 27 of the Act held an inquiry in which a number of issues were settled between the parties. However, two questions could not be settled by agreement and had to be referred to the arbitrator who in the instant case was the President of the Sessions Court in Sibu. At the hearing before the President, he declined to deal with the questions referred. He remitted the case "to the Commissioner to hold a full and proper inquiry in accordance with the procedures as provided for under section 27 and section 35(1)(2) *et seq.*"

As a result of a letter dated January 15, 1986, from the Assistant Director of Labour, 3rd Division Sibu, the record of these proceedings was brought before the court.

Held: (1) under section 27 of the Act an inquiry held by an Assistant Commissioner was for the purpose of settling questions arisen under the Act by agreement between him, the workman and the employer, and not in order that evidence may be gathered so as to enable an arbitrator to decide disputed questions of law referred to the latter;

(2) an Assistant Commissioner was to refer to the arbitrator all questions arisen under the Act that the parties cannot agree and the arbitrator is to decide all questions so referred irrespective of whether they are questions of fact or law (section 30 of the Act);

(3) exercising the revisionary jurisdiction, the order of the arbitrator was set aside and the case be remitted to the President of Sessions Court, Sibu, as arbitrator for a proper inquiry on the issues referred under section 30 of the Act.

Cases referred to:

(1) *Golden Hope Rubber Estate Ltd.* v. *Kuppusamy* [1964] M.L.J. 178.

(2) *Persin Kaur* v. *The Renong Tin Dredging Co. Ltd.* [1967] 2 M.L.J. 286.

CIVIL REVISION.

Boniface Ahoy Raweh (Assistant Director of Labour) for Commissioner.

Respondent company unrepresented.

Cur. Adv. Vult.

Chong Siew Fai J.: The record of these proceedings was brought before this court as a result of a letter dated January 15, 1986, from the Assistant Director of Labour, 3rd Division, Sibu. The matter concerns a claim under the Workmen's Compensation Act 1952 (hereinafter referred to as "the Act") in respect of the death of one Chin Sey Lek. The respondent company is a shipping company known as Y.T.K. Shipping Sdn. Bhd.

For the purpose of the present proceedings it is unnecessary to go into the agreed and the disputed facts and circumstances of the incident giving rise